
HOUSE BILL 2649

State of Washington

54th Legislature

1996 Regular Session

By Representatives Horn, Scott and Reams

Read first time 01/16/96. Referred to Committee on Government Operations.

1 AN ACT Relating to establishing mechanisms for the transfer of
2 solid waste collection authority between the utilities and
3 transportation commission and a city, town, or combined city-county;
4 amending RCW 35.02.160 and 35.13.280; adding new sections to chapter
5 81.77 RCW; adding new sections to chapter 35.21 RCW; adding a new
6 section to chapter 35A.21 RCW; adding a new section to chapter 35.67
7 RCW; adding a new section to chapter 36.65 RCW; adding a new section to
8 chapter 35A.05 RCW; adding a new section to chapter 35.10 RCW; creating
9 a new section; and declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** (1) The legislature finds that existing
12 mechanisms for the timely and responsible transfer of solid waste
13 collection responsibilities from private solid waste collection
14 companies regulated by the Washington utilities and transportation
15 commission to either cities, towns, or a combined city-county are
16 confusing and contribute to legal actions, and that no mechanisms exist
17 for such a municipality to establish or reestablish service.

18 (2) The legislature further finds that capital investments made by
19 solid waste collection companies as required by the state solid waste

1 reduction and recycling provisions of chapter 70.95 RCW and by
2 jurisdictional solid waste plans have been and continue to be
3 significant and that it is fair and equitable to address amortization
4 of these costs and the cost of new required programs during a process
5 of regulatory transfer.

6 (3) The legislature therefore declares that it is the intent and
7 purpose of this act to provide for a common, consistent, and
8 cooperative mechanism for the transfer of solid waste authority between
9 solid waste collection companies and cities, towns, or a combined
10 city-county and to permit the amortization of costs incurred for
11 implementing solid waste programs identified in solid waste plans or
12 otherwise approved by local jurisdictions or a state agency.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 81.77 RCW
14 to read as follows:

15 (1) After January 1, 1996, prior to a decision of a city, town, or
16 a combined city-county to undertake solid waste collection services
17 pursuant to any grant of legislative authority previously granted by
18 chapters 35.21, 35A.21, 35.67, and 36.65 RCW or other provisions of law
19 existing as of the effective date of this act shall require the
20 municipality to implement the provisions of RCW 81.77.020 by serving
21 written notice upon the holder or holders of a certificate of public
22 convenience and necessity issued by the commission, and upon the
23 commission itself, of its intent to exercise its authority pursuant to
24 RCW 81.77.020. This notice shall be served after the municipality
25 conducts a hearing concerning the assumption of the rights, powers,
26 functions, and obligations and upon a finding that the public welfare
27 or interest are best served by such an assumption.

28 (2) The certificate holder or holders shall continue to provide
29 solid waste collection service under the authority of the commission
30 for a term of not less than ten years from the date of notice. The
31 commission may not grant certificates of public convenience and
32 necessity for that territory during the same period except upon the
33 appropriate showing under RCW 81.77.040. The municipality is
34 prohibited from providing for additional solid waste collection during
35 the same period. However, this section does not preclude the purchase
36 by the annexing, incorporating, or regulating city, town, or combined
37 city-county of the certificate of public convenience and necessity at
38 an agreed upon price, or from acquiring the certificate by condemnation

1 upon payment of damages, including a reasonable amount to compensate
2 for the loss of the certificate of public convenience and necessity.

3 (3) In the event that any person, firm, or corporation whose
4 franchise or permit has been canceled by the terms of this section
5 suffers any measurable damages as a result of any action taken under
6 this section, such person, firm, or corporation has a right of action
7 against any city, town, or combined city-county causing such damages.
8 The action must be brought within ten years from the date of notice.
9 In any action brought to enforce this section a collection company is
10 entitled to receive its costs and reasonable attorney's fees.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 81.77 RCW
12 to read as follows:

13 A city, town, or combined city-county may at any time reverse its
14 decision to exercise its authority under RCW 81.77.020. The commission
15 shall, after consultation with affected municipalities and collection
16 companies, adopt rules and procedures to follow in such an event.
17 However, service to the area encompassed by the city, town, or combined
18 city-county shall be provided by the holder or holders of the
19 commission certificate of public convenience and necessity prior to the
20 municipality's exercise of authority pursuant to RCW 81.77.020. If
21 there was no certificate existing for the area, or for portions of the
22 area, or the previous holder or holders was compensated for its
23 certificate property right, the commission shall consider applications
24 for authority from solid waste collection companies who desire to serve
25 the area, and award a certificate or certificate pursuant to RCW
26 81.77.040.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 81.77 RCW
28 to read as follows:

29 (1) A solid waste collection company providing service pursuant to
30 a certificate of public convenience and necessity issued by the
31 commission shall have a right of action, including damages, against any
32 person, firm, corporation, municipality, tribal government, or other
33 state or local governmental entity that provides solid waste collection
34 service outside its jurisdictional or contracting service areas and
35 within the service area enumerated in the collection company's
36 certificate. If the solid waste collection company prevails in such an

1 action it is entitled to receive, in addition to damages, its costs and
2 reasonable attorney's fees.

3 (2) In addition or in the alternative, the commission, upon
4 complaint or its own motion, may investigate and enforce the provisions
5 of this chapter in the event any person, firm, corporation,
6 municipality, tribal government, or other state or local governmental
7 entity that provides solid waste collection service outside its
8 jurisdictional or contracting service areas, or without direct
9 legislative authority, within the service area enumerated in a
10 certificate of public convenience and necessity issued to a company or
11 companies.

12 **Sec. 5.** RCW 35.02.160 and 1986 c 234 s 24 are each amended to read
13 as follows:

14 The incorporation of any territory as a city or town shall cancel,
15 as of the effective date of such incorporation, any franchise or permit
16 (~~((theretofore))~~) previously granted to any person, firm, or corporation
17 by the state of Washington, or by the governing body of such
18 incorporated territory, authorizing or otherwise permitting the
19 operation of any public transportation(~~((, garbage collection and/or~~
20 ~~disposal))~~) or other similar public service business or facility within
21 the limits of the incorporated territory(~~((, but))~~). However, the holder
22 of any such franchise or permit canceled pursuant to this section shall
23 be (~~((forthwith))~~) immediately granted by the incorporating city or town
24 a franchise to continue such business within the incorporated territory
25 for a term of not less than the remaining term of the original
26 franchise or permit, or five years, whichever is the shorter period(~~((~~
27 ~~and))~~). The incorporating city or town, by franchise, permit, or public
28 operation, shall not extend similar or competing services to the
29 incorporated territory except upon a proper showing of the inability or
30 refusal of such person, firm, or corporation to adequately service
31 (~~((said))~~) the incorporated territory at a reasonable price(~~((: PROVIDED,~~
32 ~~That))~~). The provisions of this section (~~((shall))~~) do not preclude the
33 purchase by the incorporating city or town of (~~((said))~~) the franchise,
34 business, or facilities at an agreed or negotiated price, or from
35 acquiring the same by condemnation upon payment of damages, including
36 a reasonable amount for the loss of the franchise or permit. In the
37 event that any person, firm, or corporation whose franchise or permit
38 has been canceled by the terms of this section (~~((shall))~~) suffers any

1 measurable damages as a result of any incorporation pursuant to the
2 provisions of chapter 35.02 RCW, such person, firm, or corporation
3 (~~shall have~~) has a right of action against any city or town causing
4 such damages. Solid waste franchises are governed by section 2 of this
5 act.

6 **Sec. 6.** RCW 35.13.280 and 1994 c 81 s 15 are each amended to read
7 as follows:

8 The annexation by any city or town of any territory pursuant to
9 those provisions of chapter 35.10 RCW which relate to the annexation of
10 a city or town to a city or town, or pursuant to the provisions of
11 chapter 35.13 RCW shall cancel, as of the effective date of such
12 annexation, any franchise or permit (~~theretofore~~) previously granted
13 to any person, firm, or corporation by the state of Washington, or by
14 the governing body of such annexed territory, authorizing or otherwise
15 permitting the operation of any public transportation(~~, garbage~~
16 ~~collection and/or disposal~~) or other similar public service business
17 or facility within the limits of the annexed territory(~~, but~~). The
18 holder of any such franchise or permit canceled pursuant to this
19 section shall be (~~forthwith~~) immediately granted by the annexing city
20 or town a franchise to continue such business within the annexed
21 territory for a term of not less than five years from the date of
22 issuance thereof, and the annexing city or town, by franchise, permit
23 or public operation, shall not extend similar or competing services to
24 the annexed territory except upon a proper showing of the inability or
25 refusal of such person, firm, or corporation to adequately service
26 (~~said~~) the annexed territory at a reasonable price(~~: PROVIDED,~~
27 ~~That~~). The provisions of this section (~~shall~~) do not preclude the
28 purchase by the annexing city or town of (~~said~~) the franchise,
29 business, or facilities at an agreed or negotiated price, or from
30 acquiring the same by condemnation upon payment of damages, including
31 a reasonable amount for the loss of the franchise or permit. In the
32 event that any person, firm, or corporation whose franchise or permit
33 has been canceled by the terms of this section (~~shall~~) suffers any
34 measurable damages as a result of any annexation (~~pursuant to the~~
35 ~~provisions of the laws above mentioned~~), such person, firm, or
36 corporation (~~shall have~~) has a right of action against any city or
37 town causing such damages. Solid waste franchises are governed by
38 section 2 of this act.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 35.21 RCW
2 to read as follows:

3 A city, town, or combined city-county that collects solid waste by
4 contract or by municipal employees as of January 1, 1996, has exercised
5 its options under RCW 81.77.020. A city, town, or combined city-county
6 not exercising its option to provide solid waste collection under RCW
7 81.77.020 has elected solid waste regulation by the utilities and
8 transportation commission pursuant to chapter 81.77 RCW.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 35A.21 RCW
10 to read as follows:

11 Chapter . . ., Laws of 1996 (this act) applies to code cities. A
12 code city may exercise the powers, in the manner provided, perform the
13 duties, and shall have the rights and obligations under section 2 of
14 this act and RCW 81.77.020, subject to the conditions and limitations
15 provided.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW
17 to read as follows:

18 Chapter . . ., Laws of 1996 (this act) applies to cities and towns.
19 A city or town may exercise the powers, in the manner provided, perform
20 the duties, and shall have the rights and obligations under section 2
21 of this act and RCW 81.77.020, subject to the conditions and
22 limitations provided.

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 35.67 RCW
24 to read as follows:

25 Chapter . . ., Laws of 1996 (this act) applies to cities and towns.
26 A city or town may exercise the powers, in the manner provided, perform
27 the duties, and shall have the rights and obligations under section 2
28 of this act and RCW 81.77.020, subject to the conditions and
29 limitations provided.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.65 RCW
31 to read as follows:

32 Chapter . . ., Laws of 1996 (this act) applies to combined
33 city-county governments. A combined city-county government may
34 exercise the powers, in the manner provided, perform the duties, and

1 shall have the rights and obligations under section 2 of this act and
2 RCW 81.77.020, subject to the conditions and limitations provided.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 35A.05
4 RCW to read as follows:

5 Chapter . . ., Laws of 1996 (this act) applies to consolidated code
6 cities. A consolidated code city may exercise the powers, in the
7 manner provided, perform the duties, and shall have the rights and
8 obligations under section 2 of this act and RCW 81.77.020, subject to
9 the conditions and limitations provided.

10 NEW SECTION. **Sec. 13.** A new section is added to chapter 35.10 RCW
11 to read as follows:

12 Chapter . . ., Laws of 1996 (this act) applies to consolidated
13 cities or portions of a city annexed by another city. These cities may
14 exercise the powers, in the manner provided, perform the duties, and
15 shall have the rights and obligations under section 2 of this act and
16 RCW 81.77.020, subject to the conditions and limitations provided.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 81.77 RCW
18 to read as follows:

19 The commission, after consultation with representatives of cities
20 and towns and solid waste carriers, shall adopt rules and procedures
21 necessary to implement the provisions of chapter . . ., Laws of 1996
22 (this act).

23 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and shall take
26 effect immediately.

--- END ---